IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
1. S.B. Civil Second Appeal No.230/2002

Dhanna Lal Phophalia & Another
...defendant-appellants
Versus
Shree Ballabh Pustiya Margia Damodar Das Malpani Trust through its Trustees Damodar Das Malpani & Others
...plaintiff-respondents
AND
Maganlal & Others
...proforma-defendants-respondents

2. S.B. Civil Second Appeal No.173/2002

Maganlal (since deceased) through L.Rs.
Rameshwar Prasad (since deceased) through L.Rs.
Smt. Geeta Devi & Others
...defendant-appellants
Versus
Shree Ballabh Pustiya Margia Damodar Das Malpani Trust through its Trustees Damodar Das Malpani & Others
...plaintiff-respondents
AND
Dhannalal & Others
...proforma-defendants-respondents

3. S.B. Civil Second Appeal No.264/2002

Prakash Chand S/o Shri Kistoor Chand
...defendant-appellant
Versus
Shree Ballabh Pustiya Margia Damodar Das Malpani Trust through its Trustees Damodar Das Malpani & Others
...plaintiff-respondents
AND
Rajendra Kumar S/o late Shri Ramlal Sharma & Others
...proforma-respondents

4. S.B. Civil Second Appeal No.263/2002

Jagdish Narain (since deceased) through L.Rs.
Shri Ratan Lal Sharma & Others
...defendant-appellants
Versus
Shree Ballabh Pustiya Margia Damodar Das Malpani Trust

through its Trustees Damodar Das Malpani & Others
...plaintiff-respondents
AND
Smt. Lachhma Devi W/o Shri Ram Karan & Others
...proforma-respondents

5. S.B. Civil Second Appeal No.262/2002

Ram Babu S/o late Pt. Ramlal Sharma
...defendant-appellants
Versus
Shree Ballabh Pustiya Margia Damodar Das Malpani Trust
through its Trustees Damodar Das Malpani & Others
...plaintiff-respondents
AND
Shri Rajendra Kumar & Others
...proforma-respondents

Date of Order ::: 08.11.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri B.L. Mandhana,
Shri Lalin J. Narain and
Shri Rajmal Jain, Counsel for defendant-appellants in all appeals
Shri R.K. Agarwal, Counsel for plaintiff-respondents in all appeals

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By the Court:-

These five second appeals are relating to one property wherein four persons are tenant. The plaintiff-respondent filed four separate suits for eviction against four tenants. The Second Appeals No.230/2002 and 173/2002 arise out of one suit. Therefore, all the five appeals are being disposed of by this common order.

Heard learned counsel for the parties.

The plaintiff-respondent filed a suit in respect of the disputed property in the lower court, which was decreed on the ground of personal bona-fide necessity for philanthropic use. The finding of the lower court has been affirmed by the first appellate court.

The learned counsel for the appellants, Shri B.L. Mandhana as well as Shri Rajmal Jain, both, have argued their cases at length. Their main contention is that even as per the evidence of the plaintiff himself, the plaintiff Trust is a Private Trust and cannot be treated as Public Trust and the same was not registered at the time of filing of the suit, therefore, the suit itself was not maintainable. It is further contended that the permission for raising construction of temple was not obtained from the Collector, therefore, the suit could not have been filed for bona-fide necessity for philanthropic use.

On the other hand, the learned counsel for the plaintiff-respondents contended that the present four suits were filed in the year 1970 and the plaintiff Trust was registered in the year 1976 i.e. during the pendency of the suit itself. He further contended that this Court has already considered this aspect of the matter and held that in case the Trust is registered before disposal of the suit then no prejudice is

caused to the defendant and the jurisdiction of the court is not affected. He further contended that so far as the Trust-deed is concerned, the same was registered in the year 1968 itself i.e. much before filing of the suit in the year 1970 and it was only the Trust which was registered under the provisions of the Rajasthan Public Trust Act, in the year 1976. In support of his contention, the learned counsel for the respondents relied upon the decisions in the cases of *Banshidhar Vs. Hindu Anatha Ashram (1976 WLN (UC) 237)* and *Madhopuri and Others Vs. Banshidhar & Others (1985 WLN (UC) 189)*. He also contended that so far as permission to raise construction of the temple is concerned, it is not a condition precedent for filing a suit for eviction under the provisions of Section 13 (1)(h)(iv) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, therefore, on this ground the suit cannot be rejected. He also referred Section 10 of the Rajasthan Religious Buildings and Places Act, 1954, wherein the duration of permission has been mentioned as three months whereas the present suit is pending for the last 36 years, therefore, he contended that there is no merit in the contention of the learned counsel for the appellants.

I have considered the submissions of the

learned counsel for both the parties in the light of the findings of the courts below and I find that so far as legal objection of the appellants in respect of registration of plaintiff Trust is concerned, it is fully covered by the judgment of this Court, as referred above, in the case of *Banshidhar Vs. Hindu Anatha Ashram* and *Madhopuri and Others Vs. Banshidhar & Others* (supra). The Trust-deed was registered in the year 1968 itself and the suit was filed in the year 1970 and it was only the Trust which was registered under the provisions of the Rajasthan Public Trust Act, in the year 1976 much before decision of the case by lower court. I find that no prejudice is caused to the defendants and the jurisdiction of the court is not affected. It is also relevant to mention that the present suit was in respect of eviction in respect of rented property. The relationship of landlord and tenant is fully established in the present case and the same has not been disputed by the learned counsel for the appellants also.

So far as other arguments advanced on behalf of the appellants are concerned, I find that the same are relating to question of facts and there is concurrent finding of facts by both the courts below, which cannot be interfered with by this Court in second

appeal under Section 100 of the C.P.C.

No substantial question of law is involved in any of these five second appeals and the same are accordingly dismissed at admission stage itself with no order as to costs.

Certified copy of this order may be placed in each file of other four connected appeals.

(Narendra Kumar Jain) J.

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